

**THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CIVIL CASE NO. 1:21-cv-00100-MR-WCM**

<b>NHM CONSTRUCTORS, LLC,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>vs.</b>	)	<b><u>ORDER</u></b>
	)	
<b>HEARTLAND CONCRETE, LLC,</b>	)	
	)	
<b>Defendant.</b>	)	
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**THIS MATTER** is before the Court on the Defendant's Motion to Dismiss [Doc. 9] and the Magistrate Judge's Memorandum and Recommendation [Doc. 17] regarding the disposition of that motion.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, the Honorable W. Carleton Metcalf, United States Magistrate Judge, was designated to consider the above-referenced motion and to submit a recommendation for its disposition.

On February 28, 2022, the Magistrate Judge filed a Memorandum and Recommendation in this case containing conclusions of law in support of a recommendation regarding the Defendant's motion. [Doc. 17]. The parties were advised that any objections to the Magistrate Judge's Memorandum

and Recommendation were to be filed in writing within fourteen (14) days of service. The period within which to file objections has now expired, and no written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's recommendation regarding the pending motion.

**IT IS, THEREFORE, ORDERED** that the Memorandum and Recommendation [Doc. 17] is **ACCEPTED**.


**IT IS FURTHER ORDERED** that the Defendant's Motion to Dismiss [Doc. 9] is **GRANTED IN PART** and **DENIED IN PART** as follows:

1. The Defendant's Motion is **GRANTED** as to the Plaintiff's claims of fraud, unfair and deceptive trade practices, negligence, products liability, breach of warranty for workmanlike quality, and breach of the "Repair Contract," and these claims are **DISMISSED WITH PREJUDICE**.
2. The Defendant's Motion is **DENIED** as to the Plaintiff's claims for breach of express warranty, breach of warranty of

merchantability, and breach of warranty of fitness for a particular purpose.

**IT IS SO ORDERED.**

Signed: March 17, 2022

  
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Martin Reidinger  
Chief United States District Judge

